

ANNE GOODWIN CRUMP\*  
 VINCENT J. CURTIS, JR.  
 THOMAS J. DOUGHERTY, JR.  
 JAMES G. ENNIS  
 PAUL J. FELDMAN\*  
 RICHARD HILDRETH  
 EDWARD W. HUMMERS, JR.  
 FRANK R. JAZZO  
 BARRY LAMBERGMAN  
 PATRICIA A. MAHONEY  
 M. VERONICA PASTOR\*  
 GEORGE PETRUTSAS  
 LEONARD R. RAISH  
 JAMES P. RILEY  
 MARVIN ROSENBERG  
 LONNA M. THOMPSON  
 KATHLEEN VICTORY\*  
 HOWARD M. WEISS

\*NOT ADMITTED IN VIRGINIA

## FLETCHER, HEALD &amp; HILDRETH

ATTORNEYS AT LAW

11th FLOOR, 1300 NORTH 17th STREET

ROSSLYN, VIRGINIA 22209

P. O. BOX 33847

WASHINGTON, D.C. 20033-0847

(703) 812-0400

TELECOPIER

(703) 812-0486

PAUL D.P. SPEARMAN  
 (1936-1962)  
 FRANK ROBERSON  
 (1936-1961)

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OFFICE

RETIRED  
 RUSSELL ROWELL  
 EDWARD F. KENEHAN  
 ROBERT L. HEALD  
 FRANK U. FLETCHER

OF COUNSEL  
 EDWARD A. CAINE\*  
 SPECIAL COUNSEL  
 CHARLES H. KENNEDY\*

WRITER'S NUMBER  
 (703) 812-0415

July 30, 1993

Mr. William F. Caton  
 Secretary  
 Federal Communications Commission  
 1919 M Street, N.W., Room 222  
 Stop Code 1170  
 Washington, D.C. 20554

Re: MM Docket No. 93-180  
 RM-8237  
Bowie, Texas

Dear Mr. Caton:

Transmitted herewith, on behalf of Bowie-Nocona Broadcasting Co., Inc., licensee of broadcast station KRJT-FM, Bowie, Texas, are an original and four (4) copies of its Reply to Opposition to Petition for Reconsideration in connection with the above-referenced proceeding.

Should any question arise concerning this matter, please communicate with this office.

Very truly yours,

FLETCHER, HEALD &amp; HILDRETH

*Patricia A. Mahoney*  
 Patricia A. Mahoney  
 Counsel for Bowie-Nocona  
 Broadcasting Co., Inc.

PAM/dlr

Enclosures

cc: Mr. Michael C. Ruger (with enclosure) (by hand)  
 Jeffrey D. Southmayd, Esquire (with enclosure)

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BEFORE THE

**Federal Communications Commission**

WASHINGTON, D.C. 20554

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**JUL 30 1993**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

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MM Docket No. 93-180

erroneously concluded that Bowie-Nocona had abandoned its interest in its upgrade. Bowie-Nocona also demonstrated that there were several additional irregularities in the handling of CORC's Petition for Rulemaking and pending application, to Bowie-Nocona's detriment:

- CORC's application (BPH-921023IB) is unacceptable for filing and should have been dismissed but curiously remains pending;
- in its application, CORC requested that Bowie-Nocona's Station KRJT-FM be downgraded, yet CORC never served Bowie-Nocona or its counsel with a copy of its application;
- CORC was given an opportunity to amend its unacceptable application, but instead of amending, CORC sent the Chief of the FM Branch an ex parte letter asking that its application be "held in abeyance;"
- neither Bowie-Nocona nor its counsel was served with a copy of the CORC letter to the Chief of the FM Branch;
- on April 28, 1993, CORC filed its Petition for Rulemaking in this proceeding, and, although Fletcher, Heald & Hildreth (FHH) has represented Bowie-Nocona and has been its counsel of record at the FCC for decades,<sup>2</sup> CORC did not serve the undersigned counsel or her firm with a copy of the Petition;
- although Bowie-Nocona did receive a letter dated April 1, 1993, from the Commission notifying it that CORC had filed its application, Bowie-Nocona did not receive the

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<sup>2</sup>Fletcher, Heald & Hildreth (FHH) was indicated on the FCC's April 1 letter to Bowie-Nocona, as was CORC's Vice President and counsel. Thus, CORC knew that the Commission's records reflected the undersigned firm's relationship with Bowie-Nocona and knew it was not as counsel for CORC that FHH was served. There is no excuse for CORC's failure to serve FHH.

"April 1" letter until several weeks after it was apparently dated;<sup>3</sup>

- the Commission's own file copy of the "April 1" letter indicates that it was not even mailed until sometime after 4:03 p.m. on April 5, 1993, despite the date it bears; and

- although the NPRM proposes the downgrading of KRJT-FM, and does not affect any other allotment or any other channel, the NPRM does not even require that comments and reply comments in the proceeding be served on the licensee of KRJT-FM or its counsel!

In its Opposition, CORC makes several untrue assertions about Bowie-Nocona's actions in an attempt to obscure the points raised by Bowie-Nocona in its Petition for Immediate Reconsideration. Nevertheless, CORC did not dispute any of the above allegations. The only response CORC offered was that it had served its Petition for Rulemaking on Bowie-Nocona, offering as proof its own certificate of service. However, Bowie-Nocona never received a copy of CORC's Petition for Rulemaking from CORC or CORC's counsel. To this date, the only copy Bowie-Nocona has received was provided to it by the undersigned counsel, whose paralegal discovered the Petition for Reconsideration at the Commission. Moreover, CORC does not explain why it never served FHH with any of its filings and why it never served Bowie-Nocona with its application proposing that Bowie-Nocona's authorization for KRJT-FM be downgraded or its ex parte April 28 letter to the

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<sup>3</sup>CORC states that "[i]n spite of this letter," Bowie-Nocona "took no immediate action." That statement is false, and CORC

Chief of the FM Branch asking that its application be held in abeyance.

The erroneous information (that Bowie-Nocona had not filed an application and had abandoned any interest in its upgrade) and the demonstrated irregularities above are what Bowie-Nocona contended required reconsideration - not simply the fact that Bowie-Nocona filed a minor modification application, as CORC erroneously asserts. Bowie-Nocona did not dispute the April 1 letter; and Bowie-Nocona recognizes that, if its application had been filed before CORC's Petition for Rulemaking was filed, Bowie-Nocona's application would take precedence. The converse is not true, however. See Conflicts Between Applications and Petitions for Rulemaking to Amend the FM Table of Allotments, 7 FCC Rcd 4917 (1992). CORC's Petition for Rulemaking is not required to be granted simply because it was filed before Bowie-Nocona's application.

The Commission does not require grant of every petition for rulemaking. Here there is no public interest reason for even commencing a rulemaking proceeding. CORC misleadingly portrayed its Petition as one to upgrade its own facility, implying that Bowie-Nocona's unused allotment prevents its upgrade to C2 status; whereas such an upgrade has already been allotted, based upon CORC's own representations that it could achieve its upgrade to C2 status at its current transmitter site location without any other modification to the FM Table of Allotments.

CORC can upgrade its station to C2 status and Bowie-Nocona can upgrade its station to C3 status without any rulemaking proceeding. The public interest is not served by commencing a rulemaking proceeding that only achieves the downgrading of KRJT-FM.

At the conclusion of its Opposition, CORC contends that there is no precedent to support reconsideration. That contention is absurd. Even the Commission has been known to reconsider its own action and completely reverse itself for no reason other than "upon further reflection" it has decided that its earlier decision was wrong. See, e.g., Rebecca Radio of Marco, 5 FCC Rcd 937 (1990). The Policy and Rules Division of the Mass Media Bureau has also reconsidered and reversed its own action where it "appears" that its action was based on "incomplete and erroneous information and because the public interest is likely to be adversely affected by a decision so based." See Amendment of Section 73.202(b), Table of Allotments (Garden City, Indiana), 6 FCC Rcd 3747 (MM Bur. Policy & Rules, 1991).

Bowie-Nocona has demonstrated that the NPRM was based on incomplete and erroneous information and that the public interest is likely to be adversely affected. There is no reason for the Commission to invest its valuable resources in a rulemaking proceeding to determine whether or not KRJT-FM's Class C3 status should be downgraded when KRJT-FM's C3 status does not prevent, block, or affect the Class C2 status of CORC's station KFXT-FM.

Bowie-Nocona has also demonstrated that, contrary to the misleading statements in CORC's filings with the Commission, KRJT-FM does not need to be downgraded in order for CORC to improve KFXT-FM to a C2 facility. Downgrading KRJT-FM will only prevent members of the public from receiving service they would otherwise be able to receive from an upgraded KRJT-FM.

As Bowie-Nocona has demonstrated, CORC has told the Commission that it can implement its upgrade to C2 status and greatly expand its service area without any other adjustment to the FM table of allotments. The Commission should take CORC at its word, reconsider and vacate its NPRM, and terminate the proceeding in MM Docket No. 93-180 immediately.

Respectfully submitted,

BOWIE-NOCONA BROADCASTING CO., INC.

By: Patricia A. Mahoney  
Patricia A. Mahoney

Its Attorney

FLETCHER, HEALD & HILDRETH  
11th Floor  
1300 North 17th Street  
Arlington, Virginia 22209  
(703) 812-0400

July 30, 1993

Declaration of  
Everett C. Mason

Facsimile copy executed  
July 30, 1993. Original  
to be filed upon receipt.



DECLARATION

I, Everett C. Mason, do hereby declare under penalty of perjury that the following is true and correct to the best of my knowledge, recollection and belief:

I am the President of Bowie-Nocona Broadcasting Co., Inc. I have reviewed the foregoing Reply to Opposition to Petition for Reconsideration; and the representations therein are true and correct to the best of my knowledge, recollection and belief.

*Everett P. Mason*

**CERTIFICATE OF SERVICE**

I, Diane L. Roper, a secretary in the law firm of Fletcher, Heald & Hildreth, do hereby certify that true copies of the foregoing "Reply to Opposition to Petition for Reconsideration" were sent this 30th day of July, 1993, by first-class United States mail, postage prepaid, to the following:

\*Mr. Michael C. Ruger  
Chief, Allocations Branch  
Mass Media Bureau  
Federal Communications Commission  
2025 M Street, N.W., Room 8324  
Stop Code 1800D5  
Washington, D.C. 20554

Jeffrey D. Southmayd, Esquire  
Southmayd & Miller  
1233 20th Street, N.W.  
Suite 205  
Washington, D.C. 20036  
Counsel for Central  
Oklahoma Radio Corporation

\*By hand

*Diane L. Roper*

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